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Recommended Citation
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In the Supreme Court of the State of Utah

EMPLOYEES OF UTAH FUEL COMPANY AT CLEAR CREEK, UTAH,

Petitioners,

vs.

THE INDUSTRIAL COMMISSION OF UTAH, and

UTAH FUEL COMPANY, a corporation,

Defendants.

BRIEF OF PETITIONERS

MARL D. GIBSON,

Attorney for Petitioners.

LABOR JOURNAL

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In the Supreme Court of the State of Utah

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Brief of Petitioners

STATEMENT OF FACTS

The petitioners at all times herein mentioned have been employees of the Utah Fuel Company at its mine at and near Clear Creek, Carbon County, Utah.

In the month of May, 1939, petitioners filed applications before The Industrial Commission of the State of Utah for unemployment compensation for a period beginning on the 5 day of May, 1939, and ending on the 18 day of May, 1939, both dates inclusive. Said proceedings were entitled by The Industrial Commission as Claims No. 39-A-70 and No. 39-C-22. In decisions dated May 22, 1939, and June 17, 1939, respectively, the Claims Section of the Department of Placement and Unemployment Insurance of The Industrial Commission of Utah, rendered its decision "that a stoppage of work existed because of a general strike occurring in the bituminous coal industry of the state of Utah", "that such stoppage of work existed from midnight May 4 to midnight May 18, 1939,

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and that such stoppage of work resulted from a strike fomented by the workers'' and that petitioners herein were involved in said strike, which it was claimed, was the reason that they were unemployed during the period in question.

From the Initial Determination of the matter an appeal was filed June 22, 1939, by the employees (petitioners herein) of the Utah Fuel Company at Clear Creek to the Appeal Tribunal. On the 11 day of July, 1939, the Appeal Tribunal granted the application of petitioners herein for unemployment compensation. On the 27 day of July, 1939, application for a rehearing was filed by the Utah Fuel Company and on the 14 day of August, 1939, The Industrial Commission of Utah, without granting petitioners herein a hearing, merely reversed the decision of the Appeal Tribunal and denied applicants any unemployment compensation for the period in question. On the 23 day of August, 1939, petitioners herein filed with the said Industrial Commission their ''Motion for Reconsideration of Decision or a New Trial'', and on the 13 day of October, 1939, said motion was denied.

The defendant, Utah Fuel Company, has resisted the granting of an award of unemployment compensation to petitioners herein under the provisions of subsection (d) and subsection (d) (1) of Section 5 of the Unemployment Compensation law, (Laws of Utah 1936, Special Session, Chapter 1, Section 5, Subsection (d), Subsection (d) (1)), and contended that petitioners herein are ineligible for benefits during the period in question because their unemployment was due to a stoppage of work which existed because of a strike.

Said subsection (d) and subsection (d) (1), of Section 5 of the Unemployment Compensation law, insofar as they could apply to this case, are as follows:

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"Disqualification for benefits. An individual shall be ineligible for benefits:

"(d) For any week in which it is found by the commission that his total or partial unemployment is due to a stoppage of work which exists because of a strike involving his grade, class, or group of workers at the factory or establishment at which he is or was last employed."

"(1) If the commission, upon investigation, shall find that a strike has been fomented by a worker of any employer, none of the workers of the grade, class, or group of workers of the individual who is found to be a party to such plan, or agreement to foment a strike, shall be eligible for benefits; provided, however, that if the commission, upon investigation, shall find that such strike is caused by the failure or refusal of any employer to conform to the provisions of any law of the state of Utah or of the United States pertaining to hours, wages or other conditions of work, such strike shall not render the workers ineligible for benefits."

The only record of testimony is that taken at the hearing before the Appeals Examiner. Both sides were present and introduced evidence in support of their respective claims.

We believe the record will show that before any applications for compensation were filed by petitioners herein and employees of other coal companies in the State of Utah, the employers had submitted certain matters to The Industrial Commission representing that all employees in the coal industry, who were members of the United Mine Workers of America, were on strike during the period in question.

Subsection (b) of Section 6 of the Unemployment Compensation law provides, among other things, that when claims for benefits have been made "a deputy or representative designated by the commission—shall promptly examine the claim and, on the basis of the facts found by him, shall either

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determine whether or not such claim is valid—or refer such claim to the appeal tribunal—except that in any case in which the payment or denial of benefits will be determined by the provisions of section 5 (d) of this act, the deputy shall promptly transmit his full findings of fact with respect to that subsection to the commission which, on the basis of evidence submitted and such additional evidence as it may require, shall affirm, modify or set aside such findings of fact and transmit to the deputy a decision upon the issues involved under that subsection which shall be deemed to be the decision of the deputy.''

So far as petitioners know no hearing was held or investigation made of petitioners' applications prior to the ''Initial Determination'' of the matter.

Thereafter The Industrial Commission as a whole, we assume after an investigation and possibly upon representations of employers, as hereinabove set forth, rendered a blanket decision declaring all members of the United Mine Workers of America ineligible for benefits on the theory that they were ''on strike''. Said decision applied to petitioners herein. Petitioners herein appealed to the Appeals Tribunal. We assume that that was the proper procedure under the law, in spite of the fact it does seem rather silly that an appeal can be taken from the decision of The Industrial Commission as a whole in the Initial Determination of the matter although said decision ''shall be deemed to be the decision of the deputy'' in view of the fact that subsection (e) of said section 6 gives the commission the authority ''on its own motion'' to ''affirm, modify or set aside any decision of an Appeal Tribunal on the basis of the evidence previously submitted in such case,'' etc.

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A complete hearing of the case was had before the Appeals Examiner. We believe that this was the only hearing had by petitioners on the facts which apply to them.

After said hearing the Appeals Examiner rendered a decision in favor of the applicants, which said decision upon appeal by the Utah Fuel Company was merely reversed by the commission without further evidence. Petitioners in support of a Motion for Reconsideration or a New Trial submitted a brief, which was answered by the Utah Fuel Company. Said motion was likewise denied and this appeal taken.

The Industrial Commission in its first "Decision and Order" rendered in the Initial Determination of the matter made certain findings of fact. Petitioners do not know what evidence was submitted to the commission enabling it to make said findings. They, however, do not seriously disagree with the facts set out in said findings of fact but do seriously disagree with the arguments made and conclusions drawn by the commission in said "Decision and Order."

No evidence was introduced before the Appeals Tribunal on most of the matters covered by said "findings of fact". We are rather at a loss to decide under said Unemployment Compensation law whether this Court can and should take into consideration the said findings of fact of the commission in the Initial Determination of the matter, which was a blanket decision affecting practically all employees in the state, including petitioners herein, or whether the evidence submitted before the Appeals Tribunal should be considered by this Court as the only evidence involved. We will discuss the matter further, later in this brief.

It is contended by petitioners herein that The Industrial Commission of Utah committed error, as follows:

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(a) Because its decision that petitioners are ineligible for benefits during the period in question, under the claim that they were on a strike, is illegal and is not sustained by the evidence;

(b) Because said decision is contrary to law;

(c) Because said decision is not sustained by the evidence or any evidence that petitioners were unemployed because of a strike, and that all of the evidence shows that petitioners were unemployed because there was no work for them and no work was offered them by said Utah Fuel Company during the period in question.

The questions which it appears necessary to be decided by the Court, in addition to those raised in the paragraph just hereinabove, are as follows:

1. Whether or not the "Findings of Fact" in the commission's first "Decision and Order" can be taken into consideration by this Court in rendering its decision in view of the fact that no evidence was submitted by either party before the Appeals Tribunal on most of the facts found?

If the Findings of Fact rendered by the commission in its first Decision and Order can be taken into consideration by this Court, the question arises:

(2) Whether or not employees who have a contractual right with their employer to terminate a contract upon certain conditions become ineligible for unemployment compensation by doing only what their employer has contractually agreed with them that they might do?

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ARGUMENT

It is admitted by the defendants in this case that the claimants, (petitioners herein), are entitled to have their applications granted unless they are ineligible to receive benefits because of the provisions of said subsections. In other words the Utah Fuel Company, as an affirmative defense, makes the claim that petitioners are ineligible to receive benefits because of facts bringing them within the provisions of said subsections 5 (d) and 5 (d) (1).

The position of the Utah Fuel Company of necessity must be that the "**total**—unemployment" of the claimants was "due to a stoppage of work" which existed "because of a strike", etc., and that they are, therefore, ineligible for benefits.

The burden of proof is upon the Utah Fuel Company, who asserts it, to prove that the unemployment of the men was due to a stoppage of work which existed because of a strike, etc.

20 Am. Jur.—Evidence—Section 137:

> "The burden of proof in the true sense of the term is upon the defendant as to all affirmative defenses which he sets up in answer to the plaintiff's claim or cause of action, upon which issue is joined."

See also case of Houtz v. Union P. R. Co., 33 Utah 175, 193 P. 439, 17 L. R. A. (NS) 628.

The first thing it must prove to sustain this burden is **that the Utah Fuel Company at its Clear Creek mine actually had work** available **which it offered** to the claimants and which was **refused** by them because they were on a strike.

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There can be no dispute that the Utah Fuel Company did not request the men to work at any time during the period in question and the men did not refuse to work when asked. **The defendant's superintendent in Clear Creek testified on cross examination that the men were not asked at any time to work and did not at any time refuse to work.** (Tr. p. 66).

That testimony alone should be sufficient to make it mandatory upon the commission to grant petitioners compensation.

The record shows without contradiction that the mine at Clear Creek was only worked by the company to meet the existing demand for coal. In other words, when orders for coal were received the mine worked. **Without orders it did not work.** There is **no evidence** that it had any orders at the time in question and its attorney refused to introduce evidence that it did when the matter was called to his attention by the appeals examiner. (See Tr. p. 68).

No witness testified that the mine would have worked had the employment contract not been terminated. As far as any of them would go and this includes their superintendents was that it "probably would have". This is only a guess and is not evidence in support of the company's contention and upon which it has the burden of proof as above stated.

The general superintendent testified for the Utah Fuel Company that there was a "stimulated output" of coal prior to May 4, 1939, in **anticipation** of a non-productive period after said date. (Tr. p. 50). He states further that **"there is never any demand for coal that time of year"**—(May 5, 1939) (Tr. p. 50)—and that he thinks it is right "that many" of the Utah Fuel Company's "big consumers in the State of Utah" had by May 5, 1939, "laid in a supply of coal sufficient to

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last them for sixty days". (Tr. p. 51). The only presumption that can be drawn from said testimony of the Utah Fuel Company, especially as there is no evidence to the contrary, is that the company had sufficient coal on hand to meet all orders, if it had any, and that the mine would not have operated regardless of a termination of the contract.

The general superintendent further testified that there "most assuredly would have been so little work that the men would have been entitled at least to partial unemployment compensation." (Tr. p. 53).

How many days the mine would have worked during the period in question is a matter of pure guess as there was no evidence introduced concerning it. The men were not asked to work **any days** and were not to the date of the hearing. **Men cannot refuse to work without being asked and they cannot strike from work when none exists.**

We believe that the intent of the law is that the hearing before the Appeals Examiner is a hearing de novo. The purpose of the legislature in providing for an Initial Determination of claims was to take care of the great mass of applications as expeditiously as possible. It was not its intent that any record of testimony be taken and kept and that such Initial Determination be in any sense a trial. The purpose of having an Appeals Tribunal is to provide for a hearing in those cases in which contests arise; both sides submit their evidence and a record of evidence is kept. It is then possible to determine upon what evidence, if any, the Appeals Examiner and later the commission based their respective decisions. We believe that the only evidence on record that can be taken into consideration by this Court is what was introduced before the Appeals Examiner, a record of which is

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before said Court. If we are correct in our interpretation of the law most of the matters set forth in the findings of fact in the first Decision and Order of the commission cannot be considered.

The Utah Fuel Company did not introduce any evidence of the termination of any contract at the hearing before the Appeals Examiner and it introduced no evidence whatever as to why it claimed that the petitioners herein did not work. All of the evidence and the only evidence introduced is to the effect that the men were not asked to work, did not refuse to work, that there was no work for them and that the company did not intend for them to work.

It is certainly an unwarranted conclusion of fact to find, in the absence of supporting evidence, that the mine would have worked during the period in question if notice of termination of a contract had not been given. **The Utah Fuel Company does not even claim that the mine would have worked so much that the men would not have been entitled to partial unemployment compensation as is the effect of the present decision of the commission.**

The claimants in this case have claimed at all times, that no offer of work was made to them which was refused and that the decision rendered in the initial determination of the matter could not apply to them because they never refused any employment when offered.

All of the evidence submitted by both sides shows that no offer of work during the period in question was made to the petitioners and that they did not refuse to accept any work and could not have refused because none was offered. The Utah Fuel Company does not claim that it offered work to the claimants during the period involved, or if it did, it

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failed to present even a scintilla of evidence to that effect. We find ourselves in the position in which all of the evidence on the question involved is one way, and that way is against the Utah Fuel Company and in favor of the petitioners.

It is not true that the "Testimony introduced by employer was definitely to the effect that work ceased May 4th because of a strike by members of the United Mine Workers of America, and on cross examination this fact was admitted by Alfred Carey, District Board Member, District Four."

Alfred Carey while being cross examined by Mr. Binch on the contract which expired on March 31, 1939, the extension contract and the fifteen days' notice answered, "That is correct," to the question, "And that is the time that work ceased of a productive nature in the mine, is it not? I say all productive work ceased by reason of that order on midnight May fourth."—"That is all." (Tr. p. 11).

This testimony was given by the witness on what he thought was the general condition throughout the district and was not intended specifically to apply to conditions in Clear Creek. The testimony at most, is merely a conclusion, which it is the sole prerogative of the Appeals Examiner and commission to draw, if supported by evidence, which it is not. It was further intended as the day the mine ceased operating and not the reason.

We will hereafter discuss and refer to the testimony presented in arguing and support of our contention, and to see what is the proper conclusion to be drawn from the testimony presented.

The evidence is conclusive that the place in which the men involved had been working, prior to May 4th, was practically worked out and that the coal was all but exhausted. The

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petitioners' witness, Carey, testified that he had a conversation with Mr. W. D. Bryson, General Superintendent of the Utah Fuel Company, on May 4, in which Mr. Bryson told the witness as follows: "You are well aware of the condition at Clear Creek with regard to the district you are working in. It is practically worked out"; that the Utah Fuel Company "contemplated putting in some heavy steel into a particular entry into coal they wanted to develop; they also wanted to load some rock in that particular section and also stated that they contemplated remodeling the tipple and a lot of other miscellaneous matters which he stated to me was purely construction work". (Tr. p. 6).

Petitioners' witness, Llewelyn, testified that the place that "they were working then had about gotten to the point where it was worked out," and that the coal had become so nearly exhausted that "the last three days we worked there were three or four men running around loading up bug-dust" —"to get the day's work in." (Tr. p. 15).

Mr. W. D. Bryson, the General Superintendent of the Utah Fuel Company, testified that he had a program tentatively outlined for the coming summer and that "it was substantially what has been described by other witnesses". (Tr. p. 40). He further testified that the coal in the place where the men were working "was nearing exhaustion but there was still coal to be mined." (Tr. p. 43). That he had reached his decision "in the spring" of this year "to do the construction work that had to be done." And that "the construction work was work that was necessary and had to be done before very much more coal mining could be done." (Tr. p. 45).

It may be that a little more coal could have been removed from the place that the men were working but there certainly

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could not have been a day's more work left as there were "three or four men running around loading up bug-dust—to get the day's work in". (Tr. p. 15).

At the conversation between Mr. Bryson and Mr. Carey on the 4 day of May, hereinabove referred to, Mr. Bryson did not ask that the men work to produce coal. (Tr. p. 10). He had been planning for some time to do the development work needed to be done and had decided to do it beginning with May 8th.

The evidence is conclusive that no work sign was put out notifying the men to come to work at any time after May 4 as had been the custom of the company. Certain men who had been notified personally in the past when they were to work were not notified.

The manner in which it is determined whether or not the Clear Creek mine would work on the following day is—"As the orders come in from day to day, the order clerk of the sales department (in Salt Lake City) makes up a list of the coal orders he has for fulfilling in a day or two, and he sends those by teletype to the mine and says 'work'. Now, the superintendent of the local mine, the general superintendent, and the foreman know very little about what is back of the sales department." (Tr. p. 67). The mine superintendent at Clear Creek did not at any time receive a notice to work from the sales department in Salt Lake City, between May 5 and May 18, 1939. This, in absence of proof of actual orders sufficient to work more than the Castle Gate mine, is conclusive evidence that there was no work of a productive nature for the claimants between May 5 and May 18, 1939, both dates inclusive. The company has not submitted any orders that it could not fill during the period in question.

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The witness, Zane Nelson, testified that at the close of his shift, which was the night shift on May 3 he was instructed by R. D. Hansen, who was the night boss to "put tools in safe place. It may be some time before you use them again whether there is a strike or not." "I hung up my tools and they are still hanging there." (Tr. p. 26).

All of the railroad cars in which the coal is ordinarily placed after it is mined were moved from the camp on May 4, (Tr. p. 18), showing that the company had no intention of working the following day.

On May 8 a committee representing the men called to see Mr. Thorpe, the mine superintendent, and asked him about how the development work would be divided up among the men. "He said the work would be divided up among the inside and outside day men, and we asked 'How about the contract men?'" "He stated 'they could go ahead and file claims for compensation.'" (Tr. p. 21-22).

Thorpe did not tell them that if they would mine coal they could go to work on the next day. He just enumerated those who could work and told the others they had better apply for their unemployment compensation, which shows that the company had no intention of mining coal for some time even if the contract were not terminated. Mr. Thorpe does not deny that he told the men to go ahead and file their claims for compensation. He just says that "he does not remember". The witnesses for the petitioners were positive on the matter.

Mr. Thorpe, the mine superintendent, testified that the miners at Clear Creek did not refuse to go to work because they were not asked and that they were not asked to work

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and mine coal after the day shift went off work on the 4 day of May up to and including May 18. (Tr. p. 57).

Mr. Thorpe also further testified that when the pit committee representing the men came to see him on May 8, 1939, the men were anxious to work.

On May 11, the United Mine Workers of America Union submitted to the operators a proposed new employment contract which was later accepted by the operators. If the Utah Fuel Company could be correct in a claim that the men did not work between the 5 and the 11 because they terminated the contract then they certainly would be entitled to compensation from the time they offered to sign the new one which was accepted. This would eliminate the period after the 11 of May, 1939.

It is the contention of the claimants that the company did not intend to produce coal at Clear Creek after May 4. The testimony of Mr. Thorpe, the mine superintendent, relative to what happened during the time in question is very illuminating. The following is a portion of it:

(Tr. pages 63 and 64)

Q. I am talking about your coal producing work. Didn't you contact Mr. Bryson after you found out, you say in the papers and all that sort of thing, that the union and the operators had come to some agreement, and that as far as the men were concerned they were willing and happy to go back to work—didn't you contact Mr. Bryson to find out whether the mine was going to reopen or not?

A. Not as I recollect.

Q. Why didn't you? You were told before, were you not, that the reason you weren't to work on the fifth was because the men had issued notice that they were going to have a stoppage of work effective midnight the fourth? Isn't that true?

A. Yes.

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Q. Then you would naturally think, if that is the reason why your mine had stopped operating, then you would have to have some contact with your superiors when that condition ceased to exist to find out whether or not they wanted to start operations, wouldn't you?

A. Well, it comes through the office, like I say. We didn't always get it from Mr. Bryson; he might be in some of the other mines.

Q. Did you contact the office?

A. The chief clerk takes care of that.

Q. Did you contact the chief clerk?

A. I spoke to him about it.

Q. When did you speak to him about it?

A. I don't know.

Q. Just to your best recollection.

A. We spoke every night—somewhere around the fourteenth or the fifteenth. I wouldn't say because I really didn't keep track of it.

Q. You weren't sure the fourteenth or the fifteenth that the stoppage of work had terminated, were you?

A. No.

Q. Well, I am asking you as soon as you found out that the union says, "allright, let's go back to work, the stoppage of work was terminated." Did you contact anybody in an official capacity superior to your own in the company for the purpose of finding out whether that mine was going to operate and produce coal? Did you?

A. Well, there is no use in telling a lie. I don't recollect. I think the boss was up there. I just forget when he was up there because I don't keep track of him. I don't recollect it.

Q. You don't recollect contacting any official of the company for the purpose of finding out whether the mine was going to resume coal producing operations, as soon as you found out any disagreement existing between the employees and the mine operators had terminated. You didn't do that.

A. Not that I know of.

Q. Were you advised by any of the mine officials in a superior capacity to your own at any time between, oh, the first of May and the eighteenth of May that the mine was not going to produce coal after the fourth—the day shift of the fourth?

A. No.

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Q. You were not so advised by any official of the company.
A. No.

We further wish to call to the Court's attention **that in the decision of the commission dated August 14 The Industrial Commission found as a fact, that the Utah Fuel Company "directed the members" (some of petitioners herein) "of its night shift at 2 o'clock a. m., on May 4 to put up their tools and not to return to work on the following day".** The commission then assumes to state the reason of the Utah Fuel Company for so directing said employees. We submit that the commission and the Utah Fuel Company have no right to assume that had they asked petitioners herein to go to work that petitioners would have refused. An indispensable essential of a strike is a refusal to work. We challenge the Utah Fuel Company or The Industrial Commission to point out to this Court one word of testimony showing that petitioners herein refused employment when offered to them. It is further very interesting to note that the Utah Fuel Company did not operate its mine beginning with the 18th of May, 1939, at which time it claimed the alleged strike terminated and it had not operated said mine or requested petitioners herein to work a single shift after May 4 up to and including the date of the hearing before the Appeals Examiner, which was July 6, 1939.

The Utah Fuel Company because of the lack of employment of petitioners, expected them to receive unemployment compensation as evidenced by the statement of their Superintendent Thorpe in telling petitioners that there was no work for them and to make application for their unemployment compensation. It developed later that there might be a

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chance of defeating said claims, which is the reason for the company's action since. If it had thought on May 5, 1939, that the men were not entitled to unemployment compensation it would certainly have taken the added precaution of posting notices for "work next day" and notified those men to come to work that it had been customary to notify personally.

We further wish to point out that in the commission's decision and order dated August 14, it states that the Utah Fuel Company "may have, during the strike period continued in operation". There is nothing in the law which permits employees out of work, who are otherwise eligible, to be made ineligible just because a company "may have—continued in operation" but did not, especially in view of the fact that the company then guesses that if it did want to continue in operation that the men **might have refused to work,** if they had been asked, but they were not. The law does not permit claims to be denied on guesswork. The Utah Fuel Company claims that petitioners are ineligible because they were on strike. It must prove such a claim by something other than supposition and guesswork.

The next question to be considered is whether or not employees who have a contractual right with their employer to terminate a contract upon certain conditions become ineligible for unemployment compensation by doing only what their employer has contractually agreed with them that they might do.

This question arises only if the findings of fact of the commission in its first Decision and Order can be considered by this Court in the absence of any record of evidence supporting it. If it is the law that said findings of fact may be

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taken as true, and considered by this Court in rendering its decision, said question must be passed upon, but if it is not, said question in our judgment becomes moot. We, however, will discuss it.

The findings of fact of the first Decision and Order show in part as follows:

> That no contract of employment is entered into between the employers and employees in Utah until the contract in the Central Competitive Area has been concluded. The contract in the Central Competitive Area, which is also referred to as the Appalachian Agreement, expired on March 31, 1939, which was also the expiration date of the Utah contract. The Utah contract, however, included the Section 103 set forth in said Decision and Order. Before the expiration date of the Utah contract, the employers and employees altered the provisions of Section 103, by providing for "the termination of work continued during the interim agreement, upon fifteen (15) days' written notice."

The reason for the modification of Section 103 was that both the employers and employees appreciated the fact that they could not negotiate or enter into a new contract until the Appalachian Agreement was completed. John L. Lewis and his associates were negotiating with the employers in that district. Both the employers and employees in Utah contemplated that a deadlock might develop in the Central Competitive Area, making it impossible for a contract to be entered into here and making it also impossible to negotiate a new contract. Both the employers and employees in Utah felt that they would wait upon the Central Competitive Area as long as reasonably possible, but when it became necessary to their best interest to cancel the interim agreement they

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agreed that both employers and employees might do so upon giving fifteen days' written notice.

The findings of fact show that the Utah employees had nothing whatever to do with giving said notice, or voice in the matter. They were ordered to do so, by their International Executive Board, apparently because of the deadlock in the Central Competitive Area.

As shown by the dissenting opinion of Commissioner Knerr, the employees of Utah are subordinate to the International Executive Board and "Had the members of the local unions and employees of the operators in Utah failed to obey the positive mandate issued by their International Executive Board, they would have lost their standing with the organization which might have disqualified them from ever regaining their membership in the United Mine Workers Union."

The law contemplates that employees shall be penalized only when they are out of work through fault of their own. It is not contemplated by the law that such a situation as shown could be considered as the fault of the Utah employees. They were probably more anxious to work than was the employer to have them, but both sides were helpless. John L. Lewis and his group in effect constitute the collective bargaining agency for Utah coal miners, as well as the coal miners in the Central Competitive Area. It is to be noted that the employers in the Central Competitive Area refused to allow the employees to go on working under the same terms and conditions, which was the cause of the stoppage of work there, as well as in Utah.

The Utah law contemplates that employees shall not be forced out of a union as a condition of employment. We call

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the attention of the Court to Section 5 (c) (2) of the Act, which states in part, as follows:

> (c) (2) "Notwithstanding any other provision of this act, no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions:—(c) If as a condition of being employed the individual would be requested to join a company union or to resign from or refrain from joining any bona fide labor organization."

We appreciate the fact that said paragraph is not entirely in point but it shows the intent of the act.

The employers in Utah would not enter into a contract with employees until the completion of the Appalachian contract because it was necessary that the terms of said Appalachian contract pertaining to wages, hours, etc., be known first.

The commission has apparently based its first Decision and Order upon the proposition that the employees by giving a notice of a termination of a contract render themselves ineligible.

We submit that unemployment compensation should be granted employees upon a termination of a contract without regard to the reasons, providing the contract was legally terminated. If this is not done, it would be necessary for the court to inquire into the happenings of the bargaining agencies of both the employers and employees to determine who is the most stubborn or unreasonable, in determining whether employees are entitled to unemployment compensation.

If the employees in Utah are to be bound by the acts of John L. Lewis and his group, certainly the employers in Utah should be bound by the acts of the employers in the Central

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Competitive Area. If this is done and the situation viewed as a whole, only one conclusion can be arrived at, and that is, the employees in Utah were out of employment due to no fault of their own.

Apparently there are no decisions of courts passing on the questions here involved.

In summary we submit:

1. That there is no evidence to show that the Utah Fuel Company had any work for the claimants, (petitioners herein), during the period in question.

2. That there is no evidence that the claimants, (petitioners herein), were totally unemployed due to a stoppage of work which existed because of a strike.

3. That if a strike existed in the coal mining industry there is no evidence to show that it was the cause or reason the claimants, (petitioners herein), did not work during the period in question.

4. That the only evidence introduced shows without contradiction that the claimants, (petitioners herein), were not offered work or asked to work by the defendant, Utah Fuel Company, and that the claimants, (petitioners herein), did not refuse any offer or request by the Utah Fuel Company to work.

5. That the Finding of Fact rendered by the commission in the Initial Determination of the matter cannot be taken into consideration by this Court in deciding this case.

6. That employees who have a contractual right with their employer to terminate a contract upon certain condi-

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tions do not become ineligible for unemployment compensation, by doing only what their employer has contractually agreed with them that they might do.

The only conclusion that can be drawn is that the claimants, (petitioners herein), are clearly entitled to be awarded their unemployment compensation for the period in question.

Respectfully submitted,

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